



Department of Defense

DIRECTIVE

NUMBER 5400.07
October 28, 2005

DA&M

SUBJECT: DoD Freedom of Information Act (FOIA) Program

References: (a) DoD Directive 5400.7, "DoD Freedom of Information Act Program," September 29, 1997 (hereby canceled)
(b) Section 552 of title 5, United States Code, as amended, "Freedom of Information Act"
(c) DoD 5400.7-R, "DoD Freedom of Information Act Program," September 4, 1998
(d) Section 402 note of title 50, United States Code, "National Security Agency Act of 1959"
(e) through (j), see enclosure 1

1. REISSUANCE AND PURPOSE

This Directive:

1.1. Reissues reference (a) to update policies and responsibilities for implementing the DoD Freedom of Information Act (FOIA) Program under reference (b).

1.2. Continues to authorize reference (c) to implement the FOIA Program.

1.3. Continues to delegate authorities and responsibilities for the effective administration of the FOIA program.

2. APPLICABILITY AND SCOPE

2.1. This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

2.2. National Security Agency/Central Security Service records are subject to this Directive unless the records are exempt under Section 6 of Pub. L. 86-36 (1959), codified at Section 402 note of title 50, United States Code (U.S.C.) (reference (d)). The records of the Defense Intelligence Agency, National Reconnaissance Office, and the National Geospatial-Intelligence Agency are also subject to this Directive unless the records are exempt under 10 U.S.C. 424, 50 U.S.C. 403-5e, 10 U.S.C. 455 (references (e) through (g), respectively), or other applicable law.

3. POLICY

It is DoD policy to:

3.1. Promote public trust by making the maximum amount of information available to the public, in both hard copy and electronic formats, on the operation and activities of the Department of Defense, consistent with DoD responsibility to protect national security and other sensitive DoD information as provided by applicable law.

3.2. Allow a requester to obtain Agency records from the Department of Defense that are available through other public information services without invoking the FOIA.

3.3 Make available, under the procedures established by reference (c), Agency records requested by a member of the public who explicitly or implicitly cites the FOIA.

3.4. Answer promptly all other requests for Agency information and records under established procedures and practices.

3.5. Release Agency records to the public unless those records are exempt from disclosure as outlined in reference (b).

3.6. Process requests by individuals for access to records about themselves contained in a Privacy Act system of records under procedures set forth in DoD 5400.11-R (reference (h)) and procedures outlined in this Directive, as amplified by reference (c).

4. RESPONSIBILITIES

4.1. The Director, Administration and Management (DA&M) shall:

4.1.1. Serve as the appellate authority for appeals to decisions of respective Initial Denial Authorities within OSD, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the DoD Field Activities, and select Defense Agencies as listed in reference (c). The DA&M may delegate this responsibility to an appropriate member of the DA&M or Washington Headquarters (WHS) staff.

4.1.2. Prepare and maintain a DoD issuance and other discretionary information to ensure timely and reasonably uniform implementation of the FOIA in the Department of Defense.

4.2. The Director, Washington Headquarters Services, under the DA&M, shall:

4.2.1. Direct and administer the DoD FOIA Program to ensure compliance with policies and procedures that govern the administration of the program.

4.2.2. Administer the FOIA Program, inclusive of training, for the OSD, the Chairman of the Joint Chiefs of Staff and, as an exception to DoD Directive 5100.3 (reference (i)), the Combatant Commands.

4.3. The General Counsel of the Department of Defense shall provide uniformity in the legal interpretation of this Directive; ensure affected legal advisors, public affairs officers, and legislative affairs officers are aware of releases through litigation channels which may be of significant public, media, or Congressional interest, or of interest to senior DoD officials; and establish procedures to centralize processing pursuant to litigation.

4.4. The Under Secretary of Defense for Intelligence shall establish uniform procedures regarding the declassification of national security information made pursuant to requests invoking the FOIA.

4.5. The Heads of the DoD Components shall:

4.5.1. Internally administer the DoD FOIA Program and publish any instructions necessary for the internal administration of this Directive within a DoD Component that are not prescribed by this Directive or by other issuances of the DA&M in the "FEDERAL REGISTER".

4.5.2. Ensure respective chains of command, affected legal advisors, public affairs officers and legislative affairs officers are aware of releases through the FOIA, inclusive of releases through litigation channels, which may be of significant public, media, or Congressional interest, or of interest to senior DoD officials.

4.5.3. Conduct training on the provisions of this Directive and references (b) and (c) for officials and employees who implement the FOIA.

4.5.4. Submit the Annual Report prescribed in Chapter 7 of reference (c).

4.5.5. Make the records specified in Section 552(a)(2) of reference (b), unless such records are published and copies are offered for sale, available for public inspection and copying in an appropriate facility or facilities, according to rules published in the "FEDERAL REGISTER".

4.5.6. Maintain and make current indices of all 5 U.S.C. 552 (a)(2) records available for public inspection and copying.

5. INFORMATION REQUIREMENTS

The reporting requirements in Chapter 7 of reference (c) have been assigned Report Control Symbol DD-DA&M(A)1365.

6. EFFECTIVE DATE

This Directive is effective immediately.



Gordon England
ACTIVE

Enclosures - 1

E1. References, continued

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Section 424 of title 10, United States Code, "Disclosure of Organizational and Personnel Information: Exemption for Defense Intelligence Agency, National Reconnaissance Office and National Geospatial-Intelligence Agency"
- (f) Section 403-5e of title 50, United States Code, "Operational Files of the National Reconnaissance Office"
- (g) Section 455 of title 10, United States Code, "Maps, Charts, and Geodetic Data: Public Availability; Exceptions"
- (h) DoD 5400.11-R, "Department of Defense Privacy Program," August 31, 1983
- (i) DoD Directive 5100.3, "Support of the Headquarters of Combatant and Subordinate Joint Commands," November 15, 1999
- (j) DoD Directive 5025.1, "DoD Directives System," July 14, 2004